

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO. M2011-066  
FINDINGS AND RECOMMENDATIONS

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IN THE MATTER OF IMPASSE BETWEEN  
CHARLOTTE VALLEY CENTRAL SCHOOL DISTRICT  
AND  
CHARLOTTE VALLEY TEACHERS ASSOCIATION

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For Charlotte Valley Central School District : David J. Smith  
ONC BOCES

For Charlotte Valley Teachers Association : Michael E. Lynch Jr.  
NYSUT LRS

Robert E. Flynt  
Fact Finder  
NYS Public Employment Relations Board  
February 8, 2012

## BACKGROUND

The parties in this dispute are negotiating for a successor agreement to the contract which expired June 30, 2010. The Charlotte Valley Teachers Association (CVTA), representing approximately 47 professional employees, and the Charlotte Valley Central School District (District), engaged in negotiations which began in the spring of 2010. Bargaining sessions were conducted on May 10, 2010, December 21, 2010, January 26, 2011, and March 28, 2011.

The District has been seeking contract language that would allow it more flexibility in scheduling the professional workday. The District did not receive an effective response from the CVTA regarding this change. Therefore, in an attempt to bring closure to negotiations on March 28, 2011, the District offered a two year contract with no changes to the school calendar, no changes to the professional work day, and no reductions to staff except through attrition. The District offered to provide on-step staff with their step increases each year and a 1% increase for all off-step staff. The CVTA rejected this offer. Since April 18, 2011, the CVTA did not agree to meet as requested by the District, resulting in the District filing a unilateral declaration of impasse.

A mediator was assigned to assist the parties in reaching agreement. Mediation sessions were held on August 8, 2011 and September 20, 2011 without an agreement being reached.

The undersigned was assigned fact finder on October 3, 2011, and a third mediation session was conducted on October 26, 2011 without an agreement being reached.

In mid-December of 2011, the Association conducted two full membership meetings to discuss the District's proposal relative to work day and salary. On December 19, 2011, the Association voted to reject the District's proposal, and briefs were submitted to the fact finder on January 9, 2012.

The recommendations contained in this report are presented to both parties in an effort to resolve each of the issues presented to the fact finder. The positions of the parties, and discussion and recommendations by the fact finder are as follows:

## 1. Article VI - PROFESSIONAL DEVELOPMENT

The CVTA proposes amending Section A. 5. to the following: The Board of Education “shall” (replaces “may”) approve up to four (4) “half-day” (replaces “full-day”) workshops to be held from noon to “3:15” P.M. (replaces “4:30” P.M.).

The CVTA contends it has provided the District with a signed memorandum indicating this correction was agreed to during negotiations.

The District does not address this article.

Recommendation - It is recommended this language change be added to the contract as it was previously agreed to.

## Article VII - TRANSFER AND PROMOTION

The CVTA proposes amending Section A.1. by adding the following: Unit members shall be given first preference in filling vacant positions. Seniority in the District shall control when considering unit members for transfers to vacant positions.

The CVTA contends this proposal seeks to extend the basic union right of seniority in consideration for transfers. It further contends that qualified unit members should receive preference when applying for vacant positions.

The District does not address this article.

Discussion/Recommendation - It is a fairly common practice for districts to determine how they will fill vacant positions, and many times it is not in the best interest of the district to give preference based on seniority. The CVTA proposal is not recommended.

## Article VIII - PROFESSIONAL STAFF MEMBER EVALUATION

The CVTA proposes Section A.3. be amended to add the following: Observations shall not be conducted on a day immediately preceding a holiday break.

The CVTA contends that simple fairness dictates unit members should not be evaluated on days when students are most distracted, and that implementing this proposal does not impede the District's ability to conduct fair and meaningful observations.

The District agreed to this proposal during mediation on October 26, 2011.

Discussion/Recommendation - It is recommended this language be added to the contract as the District has agreed to the CVTA proposal.

## Article VIII - PROFESSIONAL STAFF MEMBER EVALUATION

The District proposes Section A.5. be amended to replace “five (5)’ with “fifteen (15)”.

The CVTA contends it is unable to determine the nature of this change as Article VIII. A.5. reveals no such reference.

Discussion/Recommendation - There was a typographical error in the District’s brief. The proposed change was actually meant for Section A.4. The District is seeking to expand the time between observation and the post-observation conference from 5 days to 15 days. It would seem that meaningful discussion related to an observation would take place as soon as possible thereafter while it is still fresh in the minds of both parties. The change is not recommended.

## 5. Article X - SHORT TERM LEAVES OF ABSENCE

The District proposes amending Section A by inserting a new last paragraph as follows: Staff will be permitted one (1) annual “exception” to the provisions related to the use of personal days contiguous to holidays and vacations. The following provisions shall apply:

Exceptions will be made at the exclusive discretion of the Chief School Administrator (CSA) or his/her designee, and only then if, in the judgment of the CSA or designee, the use of an exception by a professional staff member will not significantly impact on the routine operations of the school.

The use of the exception is credited at a rate of two (2) personal days for one day (or any fraction thereof) of exception day used.

Exceptions are privileges, not functional rights as are existing personal days.

A request must be made for their use, in writing, at least one (1) week in advance. Exceptions will not be approved until arrangements have been made for a substitute staff member. If coverage for the professional staff member is not achievable, there can be no approval for an exception.

Exceptions cannot be made contiguous to the Memorial Day weekend.

Annual exceptions will not be cumulative; an unused exception cannot be accrued for future use.

The CVTA contends the existing contract language provides clear guidance regarding personal days, and that the proposed language would burden the contract with language that is not only unclear and confusing but clearly objectionable as it attempts to redefine the longstanding right to a “personal day” as a “privilege” to be doled out by the Superintendent. The CVTA further contends the District has not provided a rationale for this proposal.

Discussion/Recommendation - The District does not appear to be attempting to redefine a unit member’s right to a “personal day” as a privilege, but rather creates the opportunity for a unit member to request an exception to current use of personal days

and seeks to define that exception as a privilege. This proposed addition to contract language does appear to provide a benefit to a unit member who experiences a need for an exception to existing language addressing personal days as in the case of an emergency. But since the CVTA does not view it as an enhancement, and does not wish to add burdensome language to the contract, this proposal is not recommended.

#### 6. Article XII - SABBATICAL LEAVE

The District proposes replacing the numbers preceding each point of reference with a letter, as this would be consistent with the organization of other points of reference throughout the contract.

The CVTA does not address this article.

Recommendation - It is recommended the numbers before the points of reference be replaced with letters as this would be consistent with the other articles in the contract.

#### 7. Article XIII - PROFESSIONAL STAFF MEMBER HOURS AND LOAD

The District proposes amending Section A.1. to the following:

“The professional staff member’s workday shall be seven (7) hours and twenty (20) minutes in length. The student’s classroom day relative to any professional staff member, shall begin ten (10) minutes after the beginning of the professional staff member’s day and end twenty-five (25) minutes before the end of the professional staff member’s day. (Currently 7:55 A.M. - 3:15 P.M.). The administration may modify the beginning and ending times of the instructional day between 7:00 A.M. and 5:00 P.M.”

The District contends its two principal concerns for this proposal relate to programming and fiscal management which can be addressed as follows:

Cooperation with other districts or post-secondary institutions for distance or “on-line” learning that may need to be incorporated into the regular school day

Facilitation of more economical transportation arrangements with potential “split sessions” similar to the practice in the Oneonta City School District. This involves half as many drivers and twice as many bus runs. In this manner, fewer drivers and buses are needed. This generates a substantial savings in benefits as a driver with two bus runs will cost one benefit package. Moreover, the District will be able to reduce the cost for bus purchases by up to 50%.

The District also contends there would be positive by-products where the change of time in the school day could potentially benefit students. First, a split session scenario that would be available through the proposed change would allow elementary students to be transported to school after sunrise which would be safer than the current practice which requires them to wait for the bus in relative darkness. Secondly, a split session

scenario would allow secondary students to begin school earlier, and students involved in extra-curricular activities would not lose class time as they would not have to leave school early to attend these activities as they do currently. The earlier end of the school day will allow for earlier practice times giving students more time after practice to engage in productive activities (i.e. homework, employment, etc.).

The District contends it provided three (3) scheduling options in which the total length of the professional workday would be 7 hours and 20 minutes, which is consistent with the current contract as the length of the work day remains unchanged.

On October 26, 2011, the District also provided contract language from the Oneonta City School that contained work schedule language similar to what has been proposed during these negotiations.

In using contract language of the Oneonta City School District as a starting point in an attempt to develop language the CVTA was comfortable with, the CVTA asked if the District would also consider the length of the Oneonta school day. The District was willing to accept that proposal to reduce the work day from 7 hours and 20 minutes to 7 hours, provided the 7 hours would be instructional and/or student contact time and the 20 minutes of planning time which had previously been done in-house during those 20 minutes, would still occur at the discretion of the staff.

The CVTA contends it has attempted to gain a clear understanding of the rationale behind the District's proposal and has asked numerous questions regarding the need for change. It contends the District's responses have failed to persuade the CVTA of the need to change existing language. The CVTA also contends existing language provides the District the ability to modify a member's workday through mutual agreement, a provision not provided for in any other teacher union contract in the BOCES. The CVTA has also reviewed contract language of area districts as it relates to distance learning. In its review of language from Andes CSD, the smallest of those districts, it concluded the language focuses on preservation of bargaining unit work and professional considerations, not scheduling or length and/or timing of the work day. The CVTA also contends it is unaware of any discussions between Charlotte Valley CSD and other districts for the purposes of sharing services related to instruction. The CVTA further contends it is being asked to take on faith that the District will be judicious in how the work day will be set, and goes on to cite several CVTA votes of no confidence in the current administration, and 13 of 39 members voting to reject the current flexible workday proposal as an explanation for its reluctance in accepting this proposal.

Discussion/Recommendation - During the mediation session of October 26, 2011, it appeared the District was making a reasonable request for "flexible" scheduling based on instructional and economic concerns that are real for small rural districts, and was offering a flat 4% salary increase for each of the two years of the proposed contract and a health insurance enhancement for staff retiring during the proposed contract. The CVTA believes it has not been given a thorough explanation of how this "flexible" scheduling would actually work, and based on its lack of trust in the administration, is

reluctant to consider it. In its brief the District has provided three (3) options related to start and end times of the work day and contact time with students. These options reflect the current work day of 7 hours and 20 minutes. It is recommended the parties further refine these options to reflect the District's willingness to reduce the work day to 7 hours, and to identify more clearly what the District is actually anticipating may likely be the option used in the "flexible" schedule it is envisioning. The District proposes contract language allowing it to schedule the workday between 7:00 A.M. and 5:00 P.M., yet the options provided in its brief present a workday that ends at 4:10 P.M. It is recommended the ending time for the work day be 4:10 P.M. thus providing the District with the "flexible" scheduling ability it is seeking while still ending the work day for unit members at a time more closely aligned with the current end of the work day.

#### 8. Article XIII - PROFESSIONAL STAFF MEMBER HOURS AND LOAD

The District proposes amending Section A.3. to the following:

"Excepting staff members attending graduate-level courses leading to attainment of their first professional level certifications, early departures shall be limited to two (2) occurrences per school year. Occurrences will not be cumulative; unused occurrences cannot be accrued for future use. The timing of the departure for each occurrence shall be at the discretion of the administration." There is no rationale provided for this proposal.

The CVTA contends this proposal is a drastic takeaway with regard to longstanding contract language, and it would strip away a unit member's ability to leave work early for the purpose of a doctor's appointment. The CVTA further questions if the District has experienced a significant increase in requests for early departures on the part of professional staff members and contends the proposal seems to come down to "control" rather than financial or programmatic necessity.

Discussion/Recommendation - Current contract language provides professional staff members the opportunity for early departure with prior approval of the administration. It is a common practice in many school districts that professional staff members be granted early departure on occasion to attend to matters that do not require the use of a full or half-day personal day so long as the privilege is not abused and professional responsibilities are properly covered. An administrator has the right to deny a request for early departure, and unit members who abuse this practice can be addressed on an individual basis. The District has not identified any abuse of the current practice. Therefore, the proposal is not recommended.

#### 9. Article XIII - PROFESSIONAL STAFF MEMBER HOURS AND LOAD

The District proposes amending Section D.1. to include new language as follows:

“The work year of professional staff members (other than new personnel, who may be required to attend additional certification sessions) shall begin as early as September 1 and end no later than June 30 of each year.

Within the 9/1-6/30 period, a full, 182 days of instruction shall be provided for students. Inclusive within that instructional time shall be the following special days: (3) Superintendent’s Days and the equivalent of one and one-half (1.5) parent-teacher conference days and two (2) staff development days in increments of .5 days per occurrence.”

The District believes at this point in negotiations it has been mutually agreed that the original contract language identifying the start of the work year, i.e. “shall begin no earlier than the day after Labor Day”, will be replaced with “begin no earlier than September 1”.

The District proposes amending Section D.2. as follows:

“Annually, the BOCES administrative cabinet shall establish a BOCES-wide calendar, the Chief School Administrator (CSA) and an authorized member of the Association will meet to discuss calendar options.

The authorized member of the Association will subsequently discuss those options with his/her constituency. Subsequently, the Association representative shall make a calendar recommendation to the CSA for submission to the Board of Education (BOE) for approval.

The BOE may approve the recommendations of the CSA, adopt the BOCES calendar or approve an alternate calendar within the limits prescribed in Subsection 1.”

The District proposes amending Section D.3. to include new language as follows:

“There will be no “snow days” built into the calendar. Rather a priority of days will be subtracted from cumulative vacation times that include an additional three (3) days as follows:

Any day attached to the Memorial Day weekend

Any days in the spring vacation (April) beginning with the first contiguous day in any fractional week and continuing from Friday to Monday in any remaining full week

Days in the winter vacation (February) beginning with Friday and working backwards to Monday

Days in the holiday vacation (December/January) beginning with the first contiguous day in December up to 12/24 (12/24 and 12/25 are exempted). The next day works backwards in January up to 01 (01 is exempted and the calendar works backwards through 12/26)”

No rationale for the changes to Article XIII Section D is provided.

The CVTA contends it has previously demonstrated a willingness to consider a change that would replace the Labor Day reference with September 1, understanding the flexibility this affords the District, and is open to considering such a change. The CVTA contends the District has failed to provide examples of other area districts that develop their calendar in a similar manner to that which is proposed, and contends the District is proposing an overly complex effort to remove the 185 day cap on the work year. The CVTA rejects the remainder of the proposal citing the removal of snow days from the calendar as an unnecessary break from the long standing practice of building snow days into the calendar.

The CVTA also proposes amending Section D.3. as follows:

“If snow days are not used up by the last week in May, then all unused days will be added to the Memorial Day Vacation. Additional days may be added at the discretion of the Superintendent.”

The CVTA proposes extending the Memorial Day break rather than using the days to extend the work year beyond what is meaningful, and contends that its proposal in no way is intended to impact student days of instruction or the District’s ability to meet its obligation under the law.

Discussion/Recommendation : Beginning the work year as early as September 1 for professional staff (other than new personnel who may be required to attend additional orientation sessions) will afford the District some level of flexibility in developing a calendar and in preparing staff for the beginning of the work year. The District’s proposal to change the beginning of the work year to September 1 is recommended.

The District has failed to provide the CVTA with any other district in the area that develops its calendar in the manner being proposed. The District has also failed to provide a rationale for its proposal. The District proposal to change the method used to determine the school calendar is not recommended.

The District has also failed to provide a rationale for eliminating the longstanding practice of building snow days into the calendar. Although the CVTA does not provide a compelling case for its proposal, it is recommended that unused snow days be added to the Memorial Day vacation as an additional enhancement in exchange for the “flexible” scheduling sought by the District.

#### 10. Article XIV - TEXTBOOKS, SUPPLIES, FACILITIES

The CVTA proposes amending Section A. to include a new number 10 as follows:

“Each unit member shall be allocated an annual budget for the purpose of purchasing school related supplies. Said amount shall be mutually agreed upon by the parties but in no case be less than \$100 per unit member.”

The CVTA contends recent research by the National School Supply and Equipment Association reports public school teachers spent more than \$1.33 billion out-of-pocket for supplies and instructional materials in the 2009-2010 school year. The cost to the District to add this provision would be \$4800 or 0.2% of the total payroll.

The District agreed to increase the amount to \$100 during mediation on October 26, 2011, in an effort to reach agreement on its “flexible” scheduling and salary proposals.

Recommendation: The CVTA proposal is recommended.

## 11. Article XV - SALARY

The CVTA proposes amending Section A. by adding language as follows:

“Credit hours pursuant to this Article shall be defined as earned college credits or approved in-service credit hours. One in-service credit hour requires fifteen (15) hours of participation. It further proposes unit members shall receive a fair and equitable increase in compensation each year of the Agreement. Licensed Teaching Assistants (LTA) shall be provided with a salary schedule and receive a fair and equitable increase in compensation each year of the Agreement. A specific percentage increase is not provided.”

The CVTA contends its proposal reflects its reasonable approach taken in these negotiations, and that it seeks to extend a schedule to the only class of employees not covered by one. The CVTA never considered the removal of the existing salary schedule as being “fair and equitable”.

The work day “flexible” scheduling proposal (Article XIII) is the District’s focus in this negotiation. In exchange for this language, the District proposed a two year contract with 4% flat distribution salary increases in each year distributed to unit employees on a flat schedule. Because of delays in reaching agreement, the District has amended its offer as follows:

### Year 1

Step increase for employees on the step schedule (average vertical percentage increase is 1.55%) and 1% increase for all staff off-step. Step increases for staff have already been included for the 2010-2011 year.

### Year 2

Step increases for those employees on the step schedule (average vertical percentage increases in the step schedule is 1.67%) and 1% increases for all staff off-step. Step increases for staff have already been included for the 2011-12 year.

Year 3

4% increase against the District's total base that would be distributed equally (flat distribution) to each unit member regardless of their position on the salary schedule or off-schedule.

Year 4

3% increase against the District's total base salary that would be distributed equally (flat distribution) to each unit member regardless of their position on the salary schedule or off-schedule.

The District contends that in order to enhance teacher salaries at the lower level of the schedule as well as salaries for the teaching assistants, salaries be distributed in years 3 and 4 of the contract according to the spreadsheet it has provided.

The CVTA contends the District proposal which originally included establishing a Base Compensation Pool is a radical one that seeks to lump together a number of separate and distinct items into a single pot. The CVTA contends the District proposal is a complex attempt to pass along current employer expenses to unit members. The CVTA contends the current Agreement utilizes the well-established methodology provided through a salary schedule as a means of determining compensation. The CVTA indicates a salary schedule is a common instrument for determining compensation for public school employees in New York state, and that 63% of the component school districts within ONC BOCES use a salary schedule similar to that contained within the Charlotte Valley contract.

Discussion/Recommendation: The CVTA's proposal to add language defining credit hours adds clarity to existing contract language and is common in many teacher contracts. The CVTA proposal is recommended.

The District's original proposal to establish a Base Compensation Pool is not discussed here because it has been amended to the percentage increases listed above.

The CVTA is seeking a "fair and equitable" increase in compensation each year of the agreement, and a salary schedule for LTA's. However, the CVTA has not provided a percentage increase it would consider "fair and equitable" as a starting point. It can be argued the District is offering less money per year for a four year agreement than it offered per year for a two year agreement. It can also be argued that since the CVTA did not offer counter proposals to offers made by the District, the CVTA has prolonged negotiations, and the District has not received any improvements to the contract for years 1 and 2 while providing salary increases, and is presently unable to provide salary increases beyond those outlined on the previous page. The District indicates that salaries at step 1 for CVTA members are higher than step 1 salaries for 3 schools in neighboring counties, while the salary for teachers with 23 years experience is

comparable to two districts and considerably lower than another. It appears the District is seeking to modify how increases are applied to the existing schedule by implementing a flat rate distribution in an attempt to attract and retain junior teachers. Yet, in its rationale for the Enhancement of Health Insurance Benefits in Retirement, the District indicates salary provisions in the contract favor persons at the bottom of the salary schedule. That apparent contradiction makes me reluctant to recommend a flat salary distribution as it appears the District is seeking an advantage. In addition, the flat rate distribution is different than the procedure used in past contracts and may place persons on the top of the schedule at a disadvantage. Therefore, the salary recommendation is as follows:

Year 1 - step increases for employees on the step schedule and 1% increase for employees off-step

Year 2 - step increases for employees on the step schedule and 1% increase for employees off-step

Year 3 - 3% increase of the employee's gross salary of the previous year plus \$350

Year 4 - 4% increase of the employee's gross salary of the previous year plus \$350

The application of the percentage increases in years 3 and 4, and the additional \$350 is consistent with the procedure used in the existing contract.

The District also proposes amending Article XV as follows:

"In lieu of additional salary, Association members will annually be allowed to exchange salary for larger District contributions (up to 100%) of their portion of the health premiums."

Discussion/Recommendation: This option allows unit members to exchange one benefit for another and may be beneficial depending on individual circumstances. The District proposal is recommended.

## 12. Article XVII - HEALTH INSURANCE

The CVTA proposes amending Section G.1. as follows:

"Any professional staff member who participates in the District dental plan shall contribute \$54 annually for individual coverage and \$510 annually for family coverage. The District shall contribute \$9,000 (replaces \$7800) annually toward the dental insurance plan."

The CVTA also proposes amending Article XVII to add a new section 1 as follows:

“Unit members electing not to participate and enroll in the District sponsored Health Insurance Plan shall receive a payment equal to 50% of the premium of the plan they decline (i.e. individual, 2-person, family).”

The CVTA contends the increase in the District’s contribution to the dental insurance plan is a standard contractual increase. The CVTA contends its second proposal creates a health insurance “buy-out” for unit members and would serve as an incentive for unit members to relinquish health insurance coverage through the District, thereby providing resources to cover additional costs that may arise through higher premium contributions, co-payments and deductibles required in the health insurance plan under which they would be covered outside of the District.

The District does not address this article.

Discussion/Recommendation : The CVTA proposal to increase the District’s contribution to the dental plan is a reasonable contractual increase, and is recommended.

The CVTA’s proposal of a health insurance “buy-out” has the potential to be a win-win situation for the parties. However, the CVTA does not provide any data that clearly shows whether that would be the case based on the number of unit members currently enrolled in the health insurance plan and the number of members who might reasonably be expected to participate in the “buy-out”. The CVTA also does not provide data showing how a “buy-out” equal to 50% of health insurance premiums would benefit the District. Therefore, the proposal for a health insurance “buy-out” equal to 50% of the premium plan being declined is not recommended unless the CVTA can demonstrate the benefit of this proposal to the satisfaction of the District. If buy-out language can be developed to the satisfaction of the District, I would suggest this provision be considered by the bargaining unit as an additional enhancement being offered in exchange for the “flexible” scheduling being sought by the District.

### 13. Article XXII - FACULTY MEETINGS

The CVTA proposes amending Section A. as follows:

“The teachers shall not be required to attend more than two (2) faculty meetings per month, no longer than 45 minutes in length, except for emergencies (removing “and such meetings shall not be unreasonably long”).”

The CVTA contends a 45 minute faculty meeting after the 7 hour and 20 minute work day is more than reasonable.

The District does not address this issue.

Discussion/Recommendation: The contract currently limits faculty meetings to no more than two (2) per month except in emergencies, and indicates such meetings shall not be unreasonably long. Many districts require only one meeting per month, and there is no

current language that defines what is considered “unreasonably long”. It would likely be in the best interest of the parties if meetings were carefully planned so as not to extend beyond 45 minutes as it is unlikely that a meeting extending beyond that time would be very productive at the end of the work day. However, there may be times when a meeting lasting beyond 45 minutes is necessary. It is recommended that in months where the first faculty meeting exceeds 45 minutes, the second faculty meeting of that month be cancelled.

#### 14. Article XXIV - EARLY RETIREMENT INCENTIVE

The CVTA proposes amending the article as follows:

“Full-time professional staff members, who have a minimum of ten years of full-time service, are eligible for the following incentive upon their retirement or resignation. Payments pursuant to this Article shall be made to a 403b account of the unit member’s choosing. “

The CVTA contends both the unit member and the District stand to save 7.65% on all payments upon retirement if those payments are directed to a 403b account of the unit member’s choosing.

The District proposed amending this article during mediation on October 26, 2011, as follows:

The District will create 403b accounts for unit members retiring from the District, payments pursuant to this article will be placed in these accounts.

The District proposes amending Article XXIV to delete the current last paragraph.

The CVTA does not address this.

Discussion/Recommendation: An early retirement incentive rewards the employee for years of continuous service to the District while providing the District with a savings in salary if it chooses not to replace the retiree or a savings realized in the difference between the salary of the retiree and the new hire. A retirement incentive is not intended for a staff member who resigns. The parties have agreed that an early retirement incentive will provide for the establishing of 403b accounts for unit members retiring from the District. The District proposal to limit the incentive to retirees and not to unit members who resign is recommended.

The last paragraph of Article XXIV would likely be an unnecessary burden for the District as it allows a unit member to return to the predecessor contract to determine his/her retirement incentive. The District proposal to remove this paragraph is recommended.

## 15. Article XXIV - EARLY RETIREMENT INCENTIVE

The District proposes amending Section B as follows:

### “Alternative to Lump Sum Retirement Incentive

In lieu of a lump sum cash award of income, any retiring staff member can, at their discretion, be credited with additional health benefits in retirement. The monetary value of the additional health benefit will be equal to the total cost to the District of the original cash award that would have been credited as income, and the cost of the accompanying requisite distributions (FICA, worker’s compensation, NYS Teachers’ Retirement).

Post-retirement, at the beginning of every fiscal year, the District will calculate the cost of the CASEBP individual health benefit. That value will form the basis for all monthly health benefit calculations as they apply to the retiree.

The alternative incentive will be made as payments, in full, for all health benefits for the retiree and, as appropriate, the retiree’s spouse. The payments will continue until distributions have been exhausted. At this point, the health benefits in retirement clause, as outlined in Article XVII. C. in the current collective agreement shall apply.”

The CVTA contends this proposal appears to be the District’s attempt to gain a tax benefit by converting cash payments into a credit to use for post-employment health insurance benefits. The CVTA also contends its proposal to have all payments upon retirement paid directly into a 403b account of the members own choosing achieves savings for the District and unit member.

Discussion/Recommendations: The District is offering a choice to retiring unit members. They may select a lump sum payment to a 403b account, or they may select the alternative above, which allows unit members to have health insurance premiums paid by the district up to the amount they would have received had they selected their incentive be contributed to the 403b account. The District is offering a choice to the unit member. The District proposal is recommended.

## 16. Article XXV - SCHOOL NURSE

The CVTA proposes amending Section G. as follows: “The School Nurse shall receive a fair and equitable increase in compensation each year of the Agreement.”

The CVTA proposes no removal of the modest salary schedule already in place for this position.

The District does not address this issue.

Recommendation: It is recommended the school nurse receive the same increases as those of other unit members as outlined above.

## 17. Article XXVII - DURATION

The District proposes a duration of four (4) years.

The District contends the unresolved dispute is already 18 months beyond the expiration of the current contract, and it would be reasonable to add two additional years rather than begin negotiations again in the spring of 2012.

The CVTA proposes the duration be mutually agreed upon by the parties.

Recommendation - The District's proposal of a four (4) year contract is recommended.

## 18. Article XXIX - OBSERVATION OF RELIGIOUS DAYS

The CVTA proposes adding a new article XXIX to read as follows:

“Unit members shall be entitled to take two additional days of leave for the purpose of observing religious holidays during each year. Prior to taking any such leave, the unit member shall notify the Superintendent of Schools of their intention to take such leave. A unit member that takes such leave shall be required to make up the time prior to the commencement of the following school year. The time shall be made up at the discretion of the Superintendent after consultation with the unit member.”

The CVTA contends all unit members should be provided the opportunity to worship according to their own faith and conscience, and the two additional days for the purpose of religious observance would be made up by the unit member.

The District does not address this issue.

Discussion/Recommendation - When a unit member takes advantage of this proposed provision, the District is without his/her intended service of providing classroom instruction. Making up the day outside of a regularly scheduled work day would seem to provide little value to the District. Furthermore, the District would experience additional costs it is not currently incurring in order to provide a substitute teacher for the absent unit member. The administration would be further burdened with developing and overseeing procedures for how time would be made up. Current contract language provides personal leave which unit members can utilize for religious observance. The CVTA proposal is not recommended.

## 19. ENHANCEMENT OF HEALTH BENEFITS IN RETIREMENT

The District proposes the following enhancement for the purpose of receiving agreement for its proposed “flexible” scheduling component, and therefore it is not added to Article XVII - Health Insurance:

## Description of proposal with sunset provision.

This enhancement credits staff based on the extent of their commitment to the District. Specifically, it uses a variable scale of percentage points of District compensation toward health benefits in retirement based on years of District service. The percentage points are awarded in single health benefits. First, they would be disseminated to the employee. Extra points would be disseminated to the employee's spouse. For accrual information regarding points, the District has developed a distribution table which it provided during negotiations.

## Rationale for Proposal

First, the current health benefit in retirement language is not competitive with offerings from other area schools. Second, it is discriminatory for employees who are not married. Married employees get a better benefit. Third, the salary provisions of the contract favor persons at the bottom of the salary schedule. The health benefit in retirement clearly benefits staff at the top of the schedule. The effective period of the clause ends with the contract (or "sunset") for a practical reason. With the cost of health benefits escalating, it is difficult for any employer to essentially predict future costs accurately. Accordingly, a sunset provision provides the District with a safety valve in order in the future to retain the ability to review the cost of this benefit against the cost of a more recent experience.

Discussion/Recommendation: This enhancement is a benefit for unit members who retire during the life of the new contract, and is recommended as part of the package the District is offering in exchange for "flexible" scheduling.

## CONCLUSION

In order for the parties to move forward and reach a fair agreement, it will be necessary for them to move beyond any personal or political differences and enter into negotiations where they are willing to carefully review the contracts of other districts which are using a "flexible" work day. The Superintendent appears willing to continue discussions and make alterations in order to arrive at language that meets the District's needs without undue burden to unit members. If so, the CVTA should engage in those discussions and clarify its specific difficulties. Only through those efforts, hopefully aided by the recommendations herein, will the parties succeed in reaching a mutually satisfactory agreement.

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Robert Flynt, Fact Finder